

Amendment No. 1 to HB0479

Haynes
Signature of Sponsor

AMEND Senate Bill No. 608

House Bill No. 479*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 64, Chapter 10, is amended by adding the following as a new part:

64-10-201.

(a) The Cumberland regional business and agribusiness marketing authority is hereby created as a public body corporate and politic, referred to as the authority in this part. The authority is a public and governmental body acting as an agent and instrumentality of the counties with respect to which the authority is organized. As such, all property of the authority, both real and personal, is exempt from all local, state and federal taxation.

(b) The acquisition, operating and financing of the authority and related purposes are hereby declared to be for public and governmental purposes and a matter of public necessity to further the economy and growth of the business and agricultural industry of the region.

(c) The purposes of the Cumberland regional business and agribusiness marketing authority are to:

(1) Create a business support process that accelerates the successful development of start-up and fledgling companies by providing entrepreneurs with an array of targeted resources and services;

(2) Have the authority to establish and operate a market for agricultural products of the region through a food distribution center, to

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provide farmers of the region with a ready market for agricultural products, and to provide the citizens of the region and other buyers a convenient place to purchase these products; and

(3) Further the economy and growth of the region served by the authority by planning, acquiring, constructing, improving, extending, furnishing, equipping, financing, owning, operating and maintaining support for small business incubators for the region.

64-10-202. As used in this part, unless the context otherwise requires:

(1) "Agribusiness" means a business dealing with agricultural products or engaged in providing products or services to farmers;

(2) "Authority" means the Cumberland regional business and agribusiness marketing authority;

(3) "Board" means the board of directors of the Cumberland regional business and agribusiness marketing authority;

(4) "Business" means any start-up or existing business;

(5) "Center" means the regional food distribution center established by the authority;

(6) "Department" means the department of agriculture;

(7) "Region" means the area consisting of the counties of Anderson, Campbell, Cumberland, Fentress, Loudon, Morgan, Roane ,Scott and any other county in the eastern grand division that becomes a member of the authority in accordance with the provisions of § 64-10-215; and

64-10-203.

(a)

(1) Subject to the provisions of subsection (b), the authority shall be governed by a board of directors consisting of the county mayor of each county, or the county mayor's designee, that is a member of the authority. Subject to the provisions of § 64-10-215, the following counties shall comprise the authority: Anderson; Campbell; Cumberland; Fentress; Loudon; Morgan; Roane; and Scott.

(2) The term of any designee shall expire with the term of the county mayor who appointed such designee. The initial terms of designees, if any, shall be as follows:

(A) The initial terms of the designees from Anderson and Cumberland counties shall be one (1) year;

(B) The initial terms of the designees from Loudon, Morgan and Fentress counties shall be two (2) years; and

(C) The initial terms of the designees from Campbell, Roane and Scott counties shall be three (3) years.

(3) Following the initial terms of service, the term of office for each designee shall be three (3) years.

(4) The board shall also have two (2) nonvoting members as follows:

(A) The president of Roane State Community College, or the president's designee; and

(B) One (1) member elected by the board.

(5) The board shall, at its first meeting of each calendar year, elect from its voting membership a chair, a vice chair, a secretary and a

treasurer, each to serve terms of one (1) year and until a successor is elected.

(6) The term of office of the county mayor serving on the board shall be coterminous with such official's elective term of office.

(b) Should a board member who is a designee attend less than fifty percent (50%) of the called meetings during a calendar year, the board is authorized to declare a vacancy on the board for that position. The board shall then notify the county mayor who appointed such designee of the vacancy and, if the county mayor fails to appoint a new designee within thirty (30) days, then the board shall, by majority vote, replace the member with a knowledgeable person from the county for which a vacancy was declared by the board.

(c) The board shall meet at least quarterly. More frequent meetings may be called at the discretion of the board.

64-10-204.

The board shall establish an executive committee consisting of the chair, vice chair, secretary, treasurer and the president of Roane State Community College or the president's designee, as an ex officio member. The executive committee is authorized to act on behalf of the board in the day-to-day operations of the authority. The executive committee shall meet at least monthly, either in person or by telephone conference, and make a full report to the board at its regular meetings.

64-10-205.

(a) The board may appoint an advisory committee consisting of one (1) member from each county that is a member of the authority.

(b) If appointed by the board, it shall be the duty of the advisory committee to consult with and advise the board regarding the operation and financial management of the authority.

64-10-206.

(a) The authority has the following powers:

(1) Perpetual succession in corporate name;

(2) Sue and be sued in its name;

(3) Adopt, use and alter a corporate seal, which shall be judicially noticed;

(4) Enter into such contracts and cooperative agreements with federal, state and local governments, with agencies of such governments, with private individuals, corporations, associations and other organizations as the board may deem necessary or convenient to enable it to carry out the purposes of this part;

(5) Adopt, amend and repeal bylaws;

(6) Appoint such managers, officers, employees, attorneys and agents as the board deems necessary for the transaction of its business, fix their compensation, define their duties and require bonds of such of them as the board may determine. The salaries of any such employees may be paid out of such funds as may be available to the authority; and

(7) Accept the transfer of grants, funds, assets and liabilities of the authority upon the termination of the interlocal government cooperative agreement establishing the authority, in accordance with the provisions of § 64-10-217.

(b) The board shall:

(1) Approve an annual budget for the authority;

(2) Adopt a purchasing policy and a personnel policy consistent with state and federal law; and

(3) Adopt policies and procedures for fiscal control and accounting.

(c) The board may do all other things that are necessary or appropriate for carrying out this part that are not prohibited by law or this part.

64-10-207.

(a)

(1) The authority is authorized and empowered to issue its bonds, notes or other obligations from time to time for the purpose of paying in whole or in part the cost of acquiring necessary lands and interests therein, and of constructing and acquiring constructed facilities and improvements necessary to further the economy and growth of the agriculture industry of the region, and the expenses incidental thereto. Prior to the adoption of any resolution of the board authorizing the sale of bonds, notes or other obligations, or entering into any contract or other arrangement in the planning or preparation for the sale of bonds, notes or other obligations, the authority shall review such plans with the comptroller of the treasury or the comptroller's designee. The state funding board established by § 9-9-101 is authorized to contract or to make other arrangements as it may deem necessary to provide for the issuance of such bonds, notes or other obligations of the authority or, in the state funding board's discretion, the authority may enter into such contracts or other arrangements. Any contract or arrangement entered into for the purpose of the issuance of any bonds, notes or other obligations shall be subject to the approval of the state funding board.

(2) Any resolution of the board authorizing the sale of bonds, notes or other obligations shall be submitted to the state funding board, and such resolution shall only become effective upon receiving the approval of the state funding board. The state funding board, upon rejecting any resolution of the board authorizing the issuance of bonds, notes or other obligations, shall state in writing the reasons for its action.

(b)

(1) Except as otherwise expressly provided in this subsection (b), all bonds, including notes or other obligations of the authority, issued by the authority, are payable solely out of the revenues and receipts derived from the authority's projects or of any revenues of the authority as may be designated in the proceedings of the board under which the bonds are authorized to be issued; provided, that notes issued in anticipation of the issuance of bonds may be retired out of the proceeds of such bonds. Such bonds may be executed and delivered by the authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding forty (40) years from the date thereof, may be payable at such place or places whether within or without Tennessee, may bear interest at such rate or rates payable at such time or times and at such place or places and evidenced in such manner, may be executed by such officers of the authority and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the board whereunder the bonds shall be authorized to be issued.

(2) If deemed advisable by the board, there may be retained in the proceedings under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, however nothing contained in this subsection (b) shall be construed to confer on the authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued.

(3) Any bonds of the authority may be sold at public or private sale in such manner, at such price and from time to time as may be determined by the board to be most advantageous, and the authority may pay all expenses, premiums and commissions that its board may deem necessary or advantageous in connection with the issuance thereof. Issuance by the board of one (1) or more series of bonds for one (1) or more purposes shall not preclude it from issuing other bonds in connection with the same project or any other project, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds.

(4) Proceeds of bonds issued by the authority may be used for the purpose of constructing, acquiring, reconstructing, improving, equipping, furnishing, bettering or extending any project or projects, including the payment of interest on the bonds during construction of any such project and for two (2) years after the estimated date of completion, for payment of engineering, fiscal, architectural and legal expenses incurred in

connection with such project and the issuance of the bonds, and for the establishment of a reasonable reserve fund for the payment of principal of and interest on such bonds in the event of a deficiency in the revenues and receipts available for such payment.

(c) Subject to the approvals required in subsection (a), any bonds or notes of the authority at any time outstanding may, at any time and from time to time, be refunded by the authority by the issuance of its refunding bonds in such amount as the board may deem necessary, but not exceeding the sum of the following:

(1) The principal amount of the obligations being refinanced;

(2) Applicable redemption premiums thereon;

(3) Unpaid interest on such obligations to the date of delivery or exchange of the refunding bonds;

(4) In the event the proceeds from the sale of the refunding bonds are to be deposited in trust as provided in this section, the amount of interest to accrue on such obligations from the date of delivery to the first or any subsequent available redemption date or dates selected, in its discretion, by the board or to the date or dates of maturity, whichever shall be determined by the board to be most advantageous or necessary to the authority;

(5) A reasonable reserve for the payment of principal of and interest on such bonds or a renewal and replacement reserve;

(6) If the project to be constructed from the proceeds of the obligations being refinanced has not been completed, an amount sufficient to meet the interest charges on the refunding bonds during the construction of such project and for two (2) years after the estimated date

of completion, but only to the extent that interest charges have not been capitalized from the proceeds of the obligations being refinanced; and

(7) Expenses, premiums and commissions of the authority, including bonds discount, deemed by the board to be necessary for the issuance of the refunding bonds. A determination by the board that any refinancing is advantageous or necessary to the authority, or that any of the amounts provided in this subdivision should be included in such refinancing or that any of the obligations to be refinanced should be called for redemption on the first or any subsequent available redemption date permitted to remain outstanding until their respective dates of maturity, shall be conclusive.

(d) Any such refunding may be effected whether the obligations to be refunded have then matured or thereafter mature, either by the exchange or the refunding bonds for the obligations to be refunded thereby with the consent of the holders of the obligations so to be refunded, or by sale of the refunding bonds, and the application of the proceeds thereof to the payment of the obligations to be refunded thereby, and regardless of whether or not the obligations proposed to be refunded are payable on the same date or different dates or are due serially or otherwise.

(e) Prior to the issuance of the refunding bonds, the board shall cause notice of its intention to issue the refunding bonds, identifying the obligations proposed to be refunded and setting forth the estimated date of delivery of the refunding bonds, to be given to the holders of the outstanding obligations by mail to each registered holder and, if the outstanding bonds or coupons are not registered securities, by publication of an appropriate notice one (1) time each in a newspaper having general circulation in the area of the project and in a

financial newspaper published in New York, New York, having national circulation. As soon as practicable after the delivery of the refunding bonds, and whether or not any of the obligations to be refunded are to be called for redemption, the board shall cause notice of the issuance of the refunding bonds to be given in the manner provided in this subsection (e).

(f) If any of the obligations to be refunded are to be called for redemption, the board shall cause notice of redemption to be given in the manner required by the proceedings authorizing such outstanding obligations.

(g) The principal proceeds from the sale of any refunding bonds shall be applied only as follows:

(1) To the immediate payment and retirement of the obligations being refunded; or

(2) To the extent not required for the immediate payment of the obligations being refunded, then such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded; but provision may be made for the pledging and disposition of any surplus, including, without limitation, provision for the pledging of any such surplus to the payment of the principal of and interest on any issue or series of refunding bonds. Money in any such trust fund may be invested in direct obligations of the United States government, or obligations the principal of and interest on which are guaranteed by the United States government, or obligations of any authority or instrumentality of the United States government or in certificates of deposit issued by a bank or trust company located in this state, if such certificates are secured by a pledge of any of such obligations having any aggregate market value, exclusive of accrued interest, equal at least to

the principal amount of the certificates so secured. Nothing in this subsection shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but that have not matured and that are not presently redeemable or, if presently redeemable, have not been called for redemption.

(h) All such bonds, refunding bonds and the interest coupons applicable thereto are hereby made and shall be construed to be negotiable instruments.

(i) The principal of and interest on any bonds issued by the authority may be secured by a pledge of the revenues and receipts out of which the same shall be made payable and may be secured by a mortgage or deed of trust covering all or any part of the projects from which the revenues or receipts so pledged may be derived, including any enlargements of and additions to any such projects thereafter made, or by an assignment and pledge of all or any part of the authority's interest in and rights under the leases, sale contracts or loan agreements relating to such projects, or any part thereof. The resolution under which the bonds are authorized to be issued and any such mortgage or deed of trust may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents or payments with respect to any projects or portions thereof covered by such resolution, mortgage or deed of trust, the creation and maintenance of special funds from such revenues and from the proceeds of such bonds and the rights and remedies available in the event of default, all as the board deems advisable and not in conflict with the provisions hereof. Each pledge, agreement, mortgage and deed of trust made for the benefit or security of any of the bonds of the authority shall continue to be effective until the principal of and interest on the bonds for the benefit of which the same were made have been fully paid. In the event of

default in such payment or in any agreements of the authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any mortgage and deed of trust executed as security for the bonds, such payment or agreement may be enforced by suit, mandamus, the appointment of a receiver in equity or by foreclosure of any such mortgage and deed of trust, or any one (1) or more of the remedies listed in this part.

64-10-208.

The board is authorized to appoint an executive director and staff whose salaries shall be paid out of the revenues generated by the authority.

64-10-209.

(a) The board shall establish the time, date and place for its regular meetings. The chair or a majority of the voting members of the board, by petition, may call special meetings of the board.

(b) A majority of the entire voting membership of the board and not simply a majority of those members present shall be necessary to conduct business.

(c) The members of the board, executive committee or advisory committee, if an advisory committee is appointed, shall serve without compensation, but may be allowed necessary travel and other expenses while engaged in the business of the authority. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

64-10-210. The counties that are members of the authority are hereby authorized and empowered to:

(1) Appropriate sufficient funds for the use of the authority amounts of money that their respective governing bodies, acting in their sole discretion, shall approve to be paid from the general fund of the respective county. County legislative bodies are empowered to levy and collect ad valorem taxes for such purposes, which are hereby declared to be for county public purposes; and

(2) Issue their bonds as provided in title 9, chapter 21, to obtain funds for the financing of public works by the authority pursuant to cooperative agreements with the authority.

64-10-211. In addition to the provisions of § 64-10-210, the authority may receive grants, appropriations, other contributions of funds, and real or personal property, from the state of Tennessee, the federal government, any other governmental entity or any nonprofit organization, individuals, companies, or corporations.

64-10-212. The financial affairs of the authority shall be conducted in accordance with state law and the procedures established by the comptroller of the treasury. The board may establish such bank accounts for the authority as the board deems appropriate and consistent with state law. The authority is authorized to invest any funds of the authority in any investment that would be an eligible investment of a county.

64-10-213.

(a) The board of directors of the authority shall cause an annual audit to be made of the books and records of the authority. Within thirty (30) days after receipt by the authority, a copy of the annual audit shall be filed with the board, and if the department of audit has not prepared the audit, with the comptroller of the treasury or comptroller's designee. The comptroller of the treasury, through the department of audit, shall be responsible for determining that such audits are

prepared in accordance with generally accepted governmental auditing standards and that such audits meet the minimum standards prescribed by the comptroller of the treasury. The comptroller of the treasury shall promulgate such rules and regulations as are required to assure that the books and records are kept in accordance with generally accepted accounting principles and that audit standards prescribed by the comptroller of the treasury are met.

(b) These audits shall be prepared by either certified public accountants, public accountants, or by the department of audit. In the event the governing body of the authority shall fail or refuse to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant, or public accountant or direct the department of audit to prepare the audit, the cost of such audit to be paid by the authority.

(c) The comptroller of the treasury is authorized to modify the requirements for an audit as set out in this section when the activity, in the comptroller of the treasury's judgment, is not sufficient to justify the expenses of a complete audit. Furthermore, the comptroller of the treasury is authorized to direct the department of audit to make an audit or financial review of the books and records of the authority.

(d) The current operating financial statements of the authority, and any other pertinent information as required by the comptroller, or the comptroller's designee, shall be submitted annually with the copy of the annual audit, or upon request, to the comptroller, or the comptroller's designee.

64-10-214. The board may direct the disposal of the authority's obsolete or surplus property, except for land purchased under the provisions of the state's grant agreement, contract number 100/005-01-91, executed May 23, 1991, and any improvements thereon, which shall immediately be offered, at no cost, to the state. Any

disposal of interest in land or improvements to real property purchased pursuant to the abovementioned grant agreement shall receive prior approval of the state building commission. Such disposal shall comply with the general law applicable to counties' sound business practices.

64-10-215.

(a) Any county in the eastern grand division not a member of the authority may become a member by:

(1) Notifying the board of its desire to become a member;

(2) Adopting a resolution by a two-thirds (2/3) vote of the county legislative body; and

(3) Contributing funds in an amount to be determined by the board, which shall not exceed the highest contribution by any county already a member as adjusted for inflation or deflation by the consumer price index, all cities average, published by the United States department of labor.

(b) Upon approval by the board and the county legislative body of the county seeking to become a member, the county shall become a member of the authority when the authority receives the necessary contribution. When a county is added as a member of the authority, the board shall cause the resolution of the county legislative body providing for addition of the county as a member of the authority to be filed with the secretary of state as an addendum. New members shall be entitled to membership on the board. The county mayor of any such county, or the county mayor's designee, shall become a member of the board for an initial term of office to be established by the board.

64-10-216. The board of directors of the authority shall report annually to the governing bodies of the various counties of the area. Such reports shall include a

summary of all activities and accomplishments for the period, a copy of the annual audit prepared in accordance with § 64-10-213, and the proposed plans for the next year.

64-10-217. Upon the dissolution of the corporation, after all creditors of the corporation have been paid, its assets shall be distributed to one (1) or more organizations that qualify as exempt organizations under Section 501 (c)(3) of the internal revenue code of 1986, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government or an institution of the board of regents system for exclusively public purposes.

64-10-218.

The authority, its properties at any time owned by it and the income and revenues derived from such properties shall be exempt from all state, county and municipal taxation. All bonds, notes and other obligations issued by the authority and the income from such bonds, notes, and other obligations shall be exempt from all state, county and municipal taxation, except inheritance, transfer and estate taxes or except as otherwise provided by state law. Bonds issued by the authority shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state.

64-10-219.

(a) Any county, city or utility district may take all actions under this part by resolution of its governing body. Any county, city or utility district shall have all powers necessary in order to further the purposes of this part.

(b) Any county, city or utility district may enter into agreements with the authority for the orderly transfer of all or any part of its system and to enter into agreement for the authority to assume, to pay or to refund bonds, notes or other obligations issued by a county, city or utility district entered into by the county, city or utility district to acquire, construct or equip all or any part of a system.

(c) Any county, city or utility district is authorized to advance, donate or lend money to the authority and to provide that funds available to it for a system shall be paid to the authority.

(d) Any county, city or utility district shall have the same right to enter into any agreement with the authority that the wastewater board deems necessary to carry out the purposes of this part as a county, city or utility district has to enter into similar agreements with wastewater treatment authorities as provided by title 68, chapter 221, part 6.

64-10-220. Nothing contained in this part shall be construed as a restriction or a limitation upon any powers that a county, city or utility district might otherwise have under any laws of this state, but shall be construed as cumulative of and supplemental to any such powers. No proceedings, notice or approval shall be required with respect to the issuance of bonds, notes or other obligations of the authority or any instrument as security for the bonds, notes or other obligations except as provided in this part, any law to the contrary notwithstanding; provided, that nothing in this section shall be construed to deprive the state and its governmental subdivisions of their respective police powers or to impair any power of any official or agency of the state and its governmental subdivisions that may be otherwise provided by law.

64-10-221. For the purposes of this part and title 4, chapter 31, the authority shall be deemed to be a local government unit and shall be eligible for the same grants, loans, and other assistance, and subject to the same obligations and requirements imposed by law related to such grants, loans, and assistance as any other local government unit.

64-10-222 This part is remedial in nature and shall be liberally construed to effect its purpose and the powers granted in this part may be exercised without regard to

requirements, restrictions or procedural provisions contained in any other law or charter except as expressly provided in this part.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.